

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

**FRIDAY, THE TWENTY SECOND DAY OF DECEMBER
TWO THOUSAND AND SIX**

PRESENT
THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

—
WRIT PETITION No.16360 of 1997

Between:

M.Mallikharjuna Rao.

..... PETITIONER

AND

**1.The Joint Collector, Khammam District,
Khammam and others.**

.....RESPONDENTS

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The Hon'ble Sri Justice Nooty Ramamohana Rao

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Writ Petition No.16360 of 1997

Order:

This Writ Petition has been instituted seeking directions to the respondents not to evict the writ petitioner from the lands in Survey No.239 situated at Tekulapalli Village, Hamlet of Bethampudi in

Tekulapalli Mandal of Khammam District.

The Writ Petitioner has asserted that he is a member belonging to the backward class and former member of a Naxalite group, and presently, he gave up the said path and joined the mainstream of the society. The writ petitioner has asserted that after the demise of his father, he had been cultivating the land situated in Survey No.239 of Tekulapalli Village, which land, was under occupation and cultivation of his father for a very long time. When the writ petitioner has approached the third respondent-Mandal Revenue Officer, Tekulapalli seeking assignment of this particular piece of land in his favour, the same was rejected on 15-10-1996. Aggrieved by the same, the writ petitioner preferred an appeal before the second respondent-Revenue Divisional Officer, Kothagudem and the same was also turned down on 19th May, 1997. The writ petitioner would further assert that he had preferred a revision before the first respondent-Joint Collector, Khammam against the orders passed by the second respondent-Revenue Divisional Officer and that the said proceedings are still pending.

The entire case centers around the claim of the

writ petitioner that the State Government has announced its policy decision through G.O.Ms.No.41 Revenue (B) Department, dated 12-01-1971 ordering that the Non-Tribal Sivaijamadars, who were in occupation of the Government lands in scheduled areas for a period of not less than ten years, should not be evicted from such lands and in case the claims of Tribal applicants are required to be considered for assigning the lands, any other suitable land in the same village or in the neighbouring village be assigned instead of dispossessing such Non-Tribal Sivaijamadars.

The first respondent-Joint Collector, Khammam, had filed his counter-affidavit in the matter. The factual possession regarding the social status of the writ petitioner was not disputed. It is also not disputed that the writ petitioner was one of the surrendered naxalites. It was further not disputed that the father of the writ petitioner Sri Kanakaiah was in occupation of an extent of Ac.5.00 cents of land in Survey No.239 situated at Tekulapalli, Hamlet of Bethapudi Village and that after the demise of Kanakaiah, the writ petitioner was in possession of the land from 1967-68 to 1978-79. The counter-affidavit would allege that

beyond

1978-79, there is no recorded evidence available to show that the petitioner is continuing in possession of the said land.

It was asserted in the counter-affidavit that out of Ac.5.00 cents of land in possession of the writ petitioner, over an extent of Ac.2.02 guntas of land, 50 scheduled tribe candidates have been granted house sites during the year 1994. The counter-affidavit does not dispute that the State Government's Policy decision announced through G.O.Ms.No.41, dated 12-01-1971 was holding the field. But however, the stand taken by the respondents is that a Sivaijamadar may not be evicted from out of the lands situated in scheduled areas, only if he is in possession of such lands from the year 1961 inasmuch as the State Government's Policy decision ordering that the Non-Tribal Sivaijamadars, who were in occupation of the Government lands in scheduled areas for a period of not less than ten years, should not be evicted from such lands, was announced in January, 1971. Since the writ petitioner was found to be in possession of the lands in question only from 1967, the writ petitioner is not entitled for extension of the benefit of the policy decision of the State Government

contained in G.O.Ms.No.41, dated 12-01-1971.

The learned Government Pleader for Assignment, while making her submissions, has also supplemented with reference to the record that the third respondent-Mandal Revenue Officer, Tekulapalli had retrieved the possession of the lands in question from the writ petitioner on 31-10-1996 under a cover of panchanama. It is also suggested that the standing crop over an extent of Ac.3.10 guntas of land estimated to the value approximately at Rs.2,000/- has also been taken into possession.

This Writ Petition depicts improper comprehension of various beneficial schemes contemplated and put in place by the State Government. The State Government on review and reconsideration of the policy with regard to eviction of Non-Tribal candidates, who have occupied Government lands situated in scheduled areas, has announced its policy decision through G.O.Ms.No.41, dated 12-01-1971, a reference to which has already been made supra. The decision announced by the State Government in the aforementioned GO was in modification of its earlier policy announced through G.O.Ms.No.971 Revenue (B) Department, dated 07-10-1969. Through this decision contained in

G.O.Ms.No.971, dated

07-10-1969, the State Government had prohibited assignment of Government lands in the scheduled areas in favour of

Non-Tribals. But however, in cases where the Government lands in the scheduled areas have been encroached upon by Non-Tribal candidates, it has been proposed to straight away evict the persons other than landless poor persons. So far as the landless poor persons are concerned, they shall not be evicted from the lands under their occupation up to a maximum extent of 2 ½ acres of wet land and 5 acres of dry land unless and until such lands are needed for assignment to Tribals. This policy relating to the eviction of Non-Tribal landless poor Sivaijamadars from out of the Government lands was reviewed and modified by the State Government in its decision contained in G.O.Ms.No.41, dated 12-01-1971. As per this policy decision, Non-Tribal landless poor Sivaijamadars in occupation of Government lands in scheduled areas should not be evicted from the lands in their occupation, if they are in occupation of those lands for a period of not less than 10 years.

Thus, the policy of the State Government as announced through G.O.Ms.No.41, dated 12-01-1971

does not lay down that the Non-Tribal landless poor Sivaijamadars should be in occupation of the Government lands situated in scheduled areas from 1961 onwards to secure the benefit of the policy contained in G.O.Ms.No.41, dated 12-01-1971. All that it would say is that, if a Non-Tribal landless poor Sivaijamadar, is in occupation of the Government Land for a period of not less than 10 years, he shall not be evicted from such lands.

In the instant case, it is admitted by the respondents that either the writ petitioner or his father were found to be in possession of the lands in question from 1967-68 to 1978-79, which period itself works out to more than 10 years duration.

In the face of this fact, as was asserted in the counter-affidavit filed by the respondent no.1, it is incomprehensible as to how the writ petitioner cannot take advantage of the policy of the State Government contained in G.O.Ms.No.41, dated 12-01-1971. It is obvious that the Revenue Administration at the District Level has also misconstrued the scope and context of the policy decision of the State Government contained in G.O.Ms.No.41 dated 12-01-1971 or deliberately acted in contravention thereof. If the policy of the State Government is not to evict the

Non-Tribal landless poor Sivaijamadars from out of the lands in their occupation for a period of 10 years or more, the writ petitioner is entitled to hang on to his possession and protect the same. It is not the case of the Revenue Administration of the State that the writ petitioner is in possession of any other land and consequently, he is disentitled to hang on to his possession over the land in question. The writ petitioner's assertion that he was a former naxalite, who gave up the said path, and is making efforts to join the main stream of the society, has not been disputed.

It, therefore, calls for consideration of the State Revenue Administration as to whether the land in question can be assigned in favour of the writ petitioner at all or not. Assigning the land in favour of the writ petitioner is altogether a different component of the controversy. The State Government's policy decision of rehabilitation of the former naxalites is the aspect, which, perhaps, is required to be considered in that regard. But, in so far as the policy decision of the State Government contained in G.O.Ms.No.41 dated 12-01-1971 is concerned, it prevents eviction of landless poor Non-Tribal Sivaijamadars in occupation of the Government lands situated in scheduled areas. Thus, eviction of such candidates is

altogether a different aspect of the matter.

For the failure of the Revenue administration to appreciate the distinction, width and scope of the policy decision contained in G.O.Ms.No.41, dated 12-01-1971,

I consider it appropriate to direct the Revenue Administration to restore possession of the land in favour of the writ petitioner.

In the normal circumstances, I would have asked for restoration of the possession in favour of the writ petitioner over the very same land, but, for the fact that it was asserted in the counter-affidavit that 50 landless Tribal candidates have been granted house site pattas over an extent of Ac.2.02 guntas from out of the lands in question, I direct the first respondent-Joint Collector, Khammam to supervise handing over of the possession of the balance land available in Survey No.239 of Tekulapalli Village forthwith to the writ petitioner. If the Revenue Administration comes to the conclusion that restoration of possession of balance land situated in Revenue Sy.No.239 of Tekulapalli village is not feasible due to further developments, if any, they must put the writ petitioner in possession of an equal extent of Ac.5.00 of land situated anywhere in

Tekulapalli village or any other neighbouring village forthwith, at any rate, within a month's time from the date of receipt of a copy of this order.

However, it is made clear that if the enquiry conducted by the Revenue Administration reveals that the writ petitioner does not answer the description of a 'landless poor person' and if he is in possession of other lands beyond the limits for answering the description of 'landless poor person', he may not be entitled for restoration of the land in such a case. The orders in this regard be communicated to the petitioner.

Since the learned Government Pleader has fairly brought to my notice that the then Mandal Revenue Officer has taken possession of a standing crop valued by him to be of Rs.2,000/- as on 31st October, 1996, the respondents shall pay this value forthwith to the writ petitioner, if not already paid by them.

Writ Petition is, accordingly, disposed of. No costs.

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(Nooty Ramamohana Rao, J)

22nd December, 2006
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